UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

		Application No.	Applicant(s)
Office Action Summary		10/713,702	HORGER, LEE CHAN
		Examiner	Art Unit
		Gerardo Araque Jr.	3689

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _11/17/03_.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-12_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-12_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Specification

1.   The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Objections

2.   **Claims 2, 9, and 10** are objected to because of the following informalities: **the claims should end with a period and not a semi-colon**. Appropriate correction is required.

Claim Rejections - 35 USC § 101

3.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4.   **Claims 1 – 8** are rejected under 35 U.S.C. 101 because based on Supreme Court precedent, and recent Federal Circuit decisions, the Office's guidance to examiner is that a § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780, 787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should recite the other statutory class (the thing or product) to which

it is tied, for example by identifying the apparatus that accomplishes the method steps,

or positively recite the subject matter that is being transformed, for example by

identifying the material that is being changed to a different state.

Here, applicant's method steps, fail the first prong of the new Federal Circuit

decision since they are not tied to another statutory class and can be performed without

the use of a particular apparatus. Thus, **Claims 1 - 8** are non-statutory since they are

not tied to another statutory class. While there is a claim to a computer system in the

preamble the applicant does not tie the steps of the method to the computer.

Claims *Claim Rejections - 35 USC § 112*

5.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

6.   **Claims 1 – 12** are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention.

7.   In regards to **claim 1**, it is unclear as to the user that the applicant is referring to

in line 4 of the claim, where it reads,"…and providing compensation to the user…".

8.   In regards to **claim 1**, the applicant discloses the limitation of, "…submitting a

speculation, the kind of allowable speculation and required details being responsive to

the game choice". However, the Examiner asserts that it is unclear whether the

limitations following "submitting a speculation" are part of the claimed invention. As a

result, it renders the scope of the claim unascertainable.

9.   Regarding **claim 7**, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

10.   Regarding **claim 7**, the applicant claims that the methods of payment can be a direct deposit or check. However, **claim 1** has already established that the preferred method is a credit card account. As a result, it is unclear how the payment is performed. For purposes of examination the Examiner will assumed that the preferred method **further comprises** direct deposit or check.

11.   In regards to **claim 8**, the Examiner is unclear regarding the limitation disclosing, "...the option of allowing a buyer to log in, **thereby using previously submitted payment identification**." In other words, it is uncertain how the previously submitted payment identification is affected by allowing a buyer to log in.

12.   In regards to **claim 12,** the applicant discloses in line 5 of the claim, "...clearly define those users whose speculation may be viewed (sellers) and what price, based upon the acceptance of payment offer and the game of choice." However, the Examiner asserts that "(sellers)" renders the claim indefinite since it is uncertain whether the limitation "(sellers)" is part of the claimed invention.

Moreover, the Examiner is also uncertain what is meant by "clearly define". That is to say, it is unclear what is meant or what is the difference between defining and clearly defining.

13.   In regards to **claims 1 – 12**, the applicant has not positively recited several limitations of the claims since the applicant has only allowed a user to perform several

of the method steps. As far as the examiner is currently concerned, nothing is

happening in the claim to effectively carry out the disclosed method. **Some** examples

can be found in **line 4 of claim 1, line 2 of claim 8, and line 6 of claim 9**.

Claim Rejections - 35 USC § 103

14.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

15.   **Claims 1 – 12** are rejected under 35 U.S.C. 103(a) as being unpatentable over

Aquilino et al. (US PGPub 2004/0128157 A1) in view of **Nick Allen, Mal Warwick,**

and Michael Stein (Fundraising on the Internet Recruiting and renewing donors

online) hereinafter referred to as **Allen**.

16.   In regards to **claims 1 and 9**, **Aquilino** discloses a method for using a computer

to provide a means of monitoring an individual's gambling success statistics, of allowing

a user/buyer to view the speculation posted by a different user/seller, and providing

compensation to the user for allowing the information to be made available, comprising:

inputting into the computer user-identification **(Page 2 ¶ 47 wherein a user**

inputs their identification);

selecting a game choice **(Page 1 ¶ 16; Page 3 ¶ 50, 55; wherein a user**

searches for a wager offer and joins);

submitting a speculation, the kind of allowable speculation and required details

being responsive to the game choice **(Page 1 ¶ 13, 14; wherein the terms and**

conditions are established for the particular wager);

displaying a list of the number of bids and percent of game wins for each user

(Page 3 ¶ 52, 64; wherein the bet details and history of a user can be viewed);

entering a payment agreement with select users based upon user's performance

in the game of choice **(Page 3 ¶ 50; wherein the payment agreement is entered for**

the selected games of choice);

requesting a particular user's speculation information for a game of choice **(Page**

3 ¶ 52, 64; Page 4 ¶ 70, 71; wherein a user's history and profile can be viewed);

Aquilino discloses a system and method which allows user's to access a

wagering system and place or accept offers that are then stored in the system's

database. **Aquilino** further discloses that a user is allowed to view their betting history

as well as other user's betting history. Moreover, the service allows the participants to

determine payoff amounts and wager non-cash items such as merchandise and

services.

However, **Aquilino** fails to explicitly disclose:

requesting a particular user's speculation information for a game of choice,

which also requires a purchase price;

inputting into the computer a payment identifier specifying a credit card account,

the payment being associated with the purchase price;

outputting the speculation information purchased after receiving the payment;

and

providing a payment to the seller.

Despite of this, the Examiner asserts that it would have been obvious to one of

ordinary skill in the art that the system and method of **Aquilino** would have allowed a

user to input the payment type in order to properly settle the wager. Although, **Aquilino**

does not explicitly disclose the specification of a credit card account, it would have been

well within the ability of one having ordinary skill in the art of online transactions that

their are various method of completing a transaction and it would not have been

uniquely challenging or difficult for **Aquilino** to contain the option of specifying a credit

card account in order to settle a wager. With that said, **Aquilino** still fails to explicitly

disclose

requesting a particular user's speculation information for a game of choice,

which also requires a purchase price;

inputting into the computer a payment identifier specifying a credit card account,

the payment being associated with the purchase price;

outputting the speculation information purchased after receiving the payment;

and

providing a payment to the seller.

Allen, however, discloses that it is old and well known to allow prospective

members to view a limited amount of information by allowing them to brows material for

the first time. Such a method is accomplished by offering a public and free Web site for

anyone to browse. Then offering a members only section of the Web site where people

who are already members can get "more" and "special" information where it would

provide a place to put personal message. As a result, it would not have been uniquely

challenging or difficult for one having ordinary skill in the art to apply the concept of

previewing for free and becoming a member or paying for additional services as taught

by **Allen** to a gambling system as discussed by **Aquilino** since it is already old and well

known for casinos to allow individuals to walk by gambling areas and preview the game

of choice in order to draw interest to join in. Regarding the actual payment process,

Aquilino discloses that the system and method allows a user to make a purchase and

having a recipient receive the user's payment. As a result, it would have also been well

within the ability of one having ordinary skill in the art to apply the payment process of

the wager transaction to the payment process associated with a user's speculation

information.

Therefore, it would have been obvious to one having ordinary skill in the art at

the time of the invention to modify **Aquilino** in view of the teachings of **Allen** to allow a

user to browse a limited amount of information in order to draw the user's interests to

the rest of available information that can be offered by a service provider as an

additional means of creating more members.

17.   In regards to **claim 2**, **Aquilino** discloses n which the step of inputting user

identification comprises:

inputting a user name, identification number or other means of identifying the

user **(Page 2 ¶ 46; wherein a user ID is inputted)**;

inputting a password or other means of authorization and confirmation that the user is indeed the individual identified **(Page 2 ¶ 46; wherein a password is inputted)**;

confirming the match of the identification and the authorization **(obviously included)**.

18.   In regards to **claim 3, the combination of Aquilino and Allen** discloses in which the step of entering into a payment agreement with a user comprises:

identifying a user who has reach a specific level of performance in a game of choice **(Page 3 ¶ 52; wherein a winner or loser is determined as well as the user's honesty)**;

inputting into the computer acceptance of payment agreement offer by user **(Page 4 ¶ 73; wherein the user would be paid directly)**;

inputting into the computer the method of payment to the user **(discussed above in claim 1)**.

Regarding the limitation, **Aquilino** fails to explicitly disclose tendering a payment offer (PO) to the user for permission to offer user's speculation information for sale to potential buyers in exchange for payment to the user an amount consisting of a specific percentage of said sales, or a flat amount.

However, as discussed above, both **Allen and Aquilino** disclose the concept of allowing users to preview selected information before becoming a member. **Aquilino** discloses the concept of tendering payment to a wager creator for accepting the wager creator's wager, as well as the additional feature of viewing the wager creator's betting history. Although, **Aquilino** discloses that the wager creator's betting history can be

viewed by anyone, it would have been obvious from the teachings of **Allen** for such

information to be considered "special" information. Consequently, it would have also

been obvious to allow a user who is requesting a user's speculation information to

compensate the user for access to their personal information/strategy.

19.   In regards to **claim 4, combination of Aquilino and Allen** discloses in which

the step of requesting purchase of a user's speculation information comprises:

         identification of those users that are also sellers, the list of users and sellers

being associated with the game choice **(Page 4 ¶ 71; wherein a bet log containing**

the wager creator and participants of the wager are stored);

         outputting by the computer the type of information that is provided by the sale, as

well as the cost of the sale **(Page 1 ¶ 13; wherein the terms and conditions of each**

wager are provided);

         selection of a seller by the buyer, thereby determining the exact information

being sold **(Page 3 ¶ 55; wherein a user can search for a specific wager)**; and

         confirmation of buyer's intent to purchase information **(Page 3 ¶ 50; wherein the**

user places a bet).

20.   In regards to **claim 5, Aquilino** fails to explicitly disclose in which the step of

inputting into the computer the payment identifier comprises:

         determining if a predetermined amount is available in the credit card account,

with the amount being associated with the cost of the sale.

         Despite of this, the Examiner asserts that it would have been obvious to one of

ordinary skill in the art that the system and method of **Aquilino** would have allowed a

user to input the payment type in order to properly settle the wager. Although, **Aquilino** does not explicitly disclose the specification of a credit card account, it would have been well within the ability of one having ordinary skill in the art of online transactions that their are various method of completing a transaction and it would not have been uniquely challenging or difficult for **Aquilino** to contain the option of specifying a credit card account in order to settle a wager. Further still, in the event that the payment is made using money an escrow can be used as a means to hold the funds until a winner is declared. Consequently, this would add the additional feature of determining if the predetermined amount is available.

21.   In regards to **claim 6**, **Aquilino** discloses in which the step of outputting the information purchased after receiving the payment identifier comprises:

     display of the information purchased, the information being associated with the seller's speculation **(Page 3 ¶ 61; wherein the user's betting history and pending bets are displayed)**.

22.   In regards to **claim 7**, **Aquilino** discloses in which the step of providing payment to seller comprises:

     holding the amount to be paid to the seller in escrow for a pre-agreed upon amount of time, such as weekly, monthly, or quarterly, with the amount to be paid being associated with the previously established percentage of the sale cost or flat rate **(Page 3 ¶ 52; Page 4 ¶ 73; wherein an escrow is disclosed and wherein the pre-agreed upon amount of time is considered to be non-functional descriptive subject matter since the amount of time adds little, if anything, to the claim's structure,**

and, thus, does not serve as a limitation on the claims to distinguish over the prior art); and

rendering payment to the seller via preferred method, such as direct deposit or check **(Page 1 ¶ 14; wherein payment is established by the participants)**.

23.   In regards to **claim 8**, **Aquilino** discloses further comprising:

the option of allowing a buyer to log in, thereby using previously submitted payment identification **(Page 3 ¶ 61; wherein the user is displayed the history of all their bets as well as pending bets)**; and

the option of requesting for payment identification with each purchase **(Fig. 14, 16, 17, 18; wherein the payment identification is provided)**.

24.   In regards to **claim 10**, **Aquilino** discloses in which the processor is further operative to the program to:

allow a user to select a game of choice such as a sport, lottery, or other game that includes making a bid with returns based upon the odds of winning a bet **(Page 3 ¶ 55; wherein a user selects a wager offer)**;

allow a user to submit a speculation as to the outcome of the game with or without a monetary amount involved in the speculation, with the allowable speculation details being based upon the game chosen **(Page 3 ¶ 50; wherein a wager is placed)**;

receive data regarding the actual outcome(s) of the game(s) being played **(Page 3 ¶ 61; wherein the status of the pending wager is provided)**;

compile statistical data relating to each player's success, which may include, but is not limited to:

number or percent of wins and losses overall and per game of choice, and the

amount of money that the user would have won if the speculations had not been purely

inquisitive **(Page 3 ¶ 64; Page 4 ¶ 70; wherein participant's statistics are provided)**.

25.   In regards to **claim 11, Aquilino** discloses in which the processor is further

operative to the program to:

send an offer of payment based upon user's wins and losses with previously

submitted speculations **(Page 3 ¶ 50; Fig. 14, 16, 17, 18; wherein an offer of payment

is transmitted)**;

receive acceptance of the payment offer **(Page 3 ¶ 50 wherein the wager

creator accepts the wager offer)**.

26.   In regards to **claim 12, Aquilino** discloses in which the processor is further

operative to the program to:

display win/loss statistics for each user which may be overall or detailed

according to game choice and other criteria **(Page 3 ¶ 64; wherein a user's statistics

are provided)**;

clearly define those users whose speculations may be viewed (sellers) and at

what price, based upon the acceptance of payment offer and the game of choice **(Page

4 ¶ 71; wherein all wagers are displayed with their respective participants and

wherein to join the wager requires a wager offer)**;

allow a user to select an eligible seller whose speculation is desired for viewing

(Page 3 ¶ 58; wherein a user is allowed to search for a specific wager);

output to the buyer a request for an authorization to use the payment identifier to provide payment **(Page 3 ¶ 66; wherein the wager creator can authorize for only a specific amount of wager offers to be taken)**;

receive the authorization from the buyer in response to the request **(Page 3 ¶ 61; wherein if the user's wager offer is accepted the pending bet will appear on their status of pending bets screen)**;

transfer payment from the buyer **(Page 4 ¶ 73; wherein if the user loses a wager payment must be made to the winner and wherein the user who is a member must pay membership dues for having access to the system)**;

display the information purchased **(Page 4 ¶ 73; wherein the information purchased is displayed)**;

transfer payment to an escrow account on behalf of the seller, with the amount of the payment associated with the payment offer **(Page 1 ¶ 5; Page 4 ¶ 73; wherein an escrow is used for the payment transaction process)**;

at predetermined intervals transfer payment from escrow to the seller **(Page 3 ¶ 52, 53; wherein at a predetermined interval payment is made to the winner, such as the wager creator)**.

However, **Aquilino** fails to explicitly disclose:

receive a payment identifier specifying a credit card account, the payment identifier being associated with the selected user and game choice ();

determine if a predetermined amount is available in the credit card account ();

Despite of this, the Examiner asserts that it would have been obvious to one of ordinary skill in the art that the system and method of **Aquilino** would have allowed a user to input the payment type in order to properly settle the wager. Although, **Aquilino** does not explicitly disclose the specification of a credit card account, it would have been well within the ability of one having ordinary skill in the art of online transactions that their are various method of completing a transaction and it would not have been uniquely challenging or difficult for **Aquilino** to contain the option of specifying a credit card account in order to settle a wager. Further still, in the event that the payment is made using money an escrow can be used as a means to hold the funds until a winner is declared. Consequently, this would add the additional feature of determining if the predetermined amount is available.

Conclusion

27.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure can be found in the PTO-892 Notice of References Cited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerardo Araque Jr. whose telephone number is (571)272-3747. The examiner can normally be reached on Monday - Friday 8:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on (571) 272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

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system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G. A./
Examiner, Art Unit 3689
9/25/08

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